

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 ANTOINETTE B. CINCOTTA  
Deputy Attorney General  
4 State Bar No. 120482  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2095  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 Case No. **2010 - 347**

12 In the Matter of the Accusation Against:

13 DOTTI I. SMITH,  
A.K.A., DOROTHY IRENE SMITH  
14 A.K.A. DOROTHY I. SMITH  
34264 Camino Capistrano #226  
Capistrano Beach, CA 92624

15 Registered Nurse License No. RN 306165

16 Respondent.

17 **ACCUSATION**

18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
22 of Consumer Affairs.

23 2. On or about September 30, 1979, the Board of Registered Nursing issued Registered  
24 Nurse License Number RN 306165 to Dotti I. Smith, also known as Dorothy Irene Smith, also  
25 known as Dorothy I. Smith (Respondent). The Registered Nurse License was in full force and  
26 effect at all times relevant to the charges brought herein, and will expire on July 31, 2011, unless  
27 renewed.

28 ///

## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

8. Section 2761 of the Code states:

“The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

“ . . .

“(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.”

9. Section 2762 of the Code states in relevant part:

“In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

“ . . .

“(b) Use . . . alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

“(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.”

## REGULATIONS

10. California Code of Regulations, title 16, section 1444, states:

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

“(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

///



1 guilty to violating Vehicle Code section 23152(a), driving under the influence of alcohol, and  
2 section 23152(b) driving with a blood/alcohol content greater than 0.08%, misdemeanors, crimes  
3 substantially related to the qualifications, functions, and duties of a registered nurse.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(August 12, 2002 Criminal Conviction - DUI on March 3, 2002**

6 **With a Prior DUI Conviction)**

7 14. Respondent's license is subject to discipline under Code sections 490 and 2761,  
8 subdivision (f), in that Respondent was convicted of crimes that are substantially related to the  
9 qualifications, functions, and duties of a registered nurse, as follows:

10 a On or about August 12, 2002, in the Superior Court, County of Orange, in the case  
11 entitled *People of the State of California v. Dorothy I. Smith* (Super. Ct., Orange Cty. Case No.  
12 CH02NM04143), Respondent was convicted by the Court on her plea of guilty to violating  
13 Vehicle Code section 23152(a), driving under the influence of alcohol, and section 23152(b),  
14 driving with a blood/alcohol content greater than 0.08%, with a prior DUI conviction for violation  
15 of Vehicle Code sections 21352(a) and 23152(b) on April 3, 2001, misdemeanors.

16 b. The circumstances underlying the convictions were that on or about March 3, 2002,  
17 Respondent drove a vehicle while under the influence of alcohol after she had been previously  
18 convicted of violations of driving under the influence of alcohol and driving with a blood/alcohol  
19 content greater than 0.08%.

20 c. As a result of these convictions, Respondent was sentenced: to serve three years  
21 informal probation; to serve 30 days in custody with credit for 1 day time served; to pay a fine of  
22 \$390.00; to pay an alcohol abuse education fee of \$50.00; to pay a state restitution fine totaling  
23 \$100.00; to pay a \$37.00 blood alcohol penalty fee; and to enroll, attend and complete an 18  
24 month Multiple Offender Program. The court further ordered Respondent's license suspended for  
25 24 months.

26 ///

27 ///

28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(September 7, 2007 Criminal Conviction - DUI on May 14, 2007**

3 **With Two Prior DUI Convictions)**

4 15. Respondent's license is subject to discipline under Code sections 490 and 2761,  
5 subdivision (f), in that Respondent was convicted of crimes that are substantially related to the  
6 qualifications, functions, and duties of a registered nurse, as follows:

7 a On or about September 7, 2007, in the Superior Court, County of Orange, in the case  
8 entitled *People of the State of California v. Dorothy I. Smith* (Super. Ct., Orange Cty. Case No.  
9 07SM02099), Respondent was convicted by the Court on her plea of guilty to violating Vehicle  
10 Code section 23152(a), driving under the influence of alcohol with two prior convictions, and  
11 section 23152(b) driving with a blood/alcohol content greater than 0.08%, with two prior DUI  
12 convictions for violation of Vehicle Code sections 21352(a) and 23152(b) on April 3, 2001 and  
13 August 12, 2002, misdemeanors.

14 b. The circumstances underlying the convictions were that on or about May 15, 2007, at  
15 about 8:20 p.m., the sheriff's deputies responded to a report of a collision at the intersection of  
16 Doheny Park Road and Camino Capistrano in Dana Point. The investigating deputies noted that  
17 Respondent had a very lethargic demeanor and appeared to be intoxicated. Her eyes were  
18 bloodshot and watery. The deputies also noticed a strong odor of an alcoholic beverage every  
19 time she breathed. Respondent appeared to have difficulty with her balance as she stood and  
20 when she walked. Respondent admitted to the deputy that she had two glasses of wine at the El  
21 Adobe in San Juan Capistrano. Based on his observations, the deputy directed Respondent to  
22 complete field sobriety testing. During the one leg stance, Respondent extended her hands out to  
23 the sides for balance. She swayed from side to side as she tried to stand with her right leg raised.  
24 Respondent would not keep her balance standing on one leg. Respondent tried to put her right leg  
25 down several times while counting. The deputy told Respondent that the test was over, but  
26 Respondent kept trying to continue the test. During the Walk and Turn Test, Respondent  
27 extended her hands out to the sides for balance. Respondent did not walk heel to toe as  
28 instructed. Respondent walked ten steps for the first set of nine steps. Respondent staggered and

1 lost her balance several times while walking. During the Horizontal Gaze Nystagmus testing, the  
2 deputy noted that Respondent had a lack of smooth pursuit in both eyes. Respondent had  
3 nystagmus in both eyes at maximum deviation. Respondent agreed to blow into a PAS device,  
4 and at 9:15 p.m., she had a blood/alcohol content of 0.23%. At 9:57 p.m., Respondent had a  
5 blood/alcohol content of 0.20%.

6 c. As a result of these convictions, Respondent was sentenced: to serve five (5) years  
7 formal probation; to serve 150 days in custody, with custody stayed pending completion of a DUI  
8 Court Program; to pay a fine of \$390.00; to pay an alcohol abuse education fee of \$50.00; to pay  
9 a state restitution fine totaling \$100.00; to pay a \$37.00 blood alcohol penalty fee; to pay a \$40  
10 security fee; to attend and complete and to enroll, attend and complete an 18 month Multiple  
11 Offender Program. The court further ordered Respondent's driver's license suspended for 24  
12 months.

#### 13 **FOURTH CAUSE FOR DISCIPLINE**

##### 14 **(June 18, 2008 Misdemeanor Criminal Conviction – Hit and Run and Driving on a** 15 **Suspended License on January 27, 2008)**

16 16. Respondent's license is subject to discipline under Code sections 490 and 2761,  
17 subdivision (f), in that Respondent was convicted of crimes that are substantially related to the  
18 qualifications, functions, and duties of a registered nurse, as follows:

19 a On or about June 18, 2008, in the Superior Court, County of Orange, in the case  
20 entitled *People of the State of California v. Dorothy Irene Smith* (Super. Ct., Orange Cty. Case  
21 No. 08SF0278), Respondent was convicted by the Court on her plea of guilty to violating Vehicle  
22 Code section 20002(a), hit and run, a misdemeanor, and section 17401.2(a), and driving on a  
23 suspended license, a misdemeanor.

24 b. The circumstances underlying the convictions were that on or about January 27, 2008,  
25 police officers responded to the report of a traffic collision at the intersection of Camino  
26 Capistrano and Del Obispo Street in San Juan Capistrano at 6:26 p.m. Only the driver of one of  
27 the two vehicles was still at the accident scene when the officers responded. The driver still at the  
28 scene of the accident described the other driver as a female, white, mid to late 40's, with blonde

1 hair driving a grey, 1990's Nissan bearing California license plate #3CCB211. The driver  
2 reported to the officer that driver of the grey Nissan rear-ended her car at a stop light. After both  
3 drivers moved their vehicles out of traffic, the driver of the vehicle that had been rear-ended  
4 advised the driver of the grey Nissan that she was notifying the police to take a report. When the  
5 driver of the grey Nissan learned of this, she left the scene.

6 The police officer checked the Department of Motor Vehicles records and determined that  
7 the registered owner of the Nissan bearing California license plate #3CCB211 was Respondent.  
8 The officer also noted that Respondent's license had been revoked for DUI.

9 c. As a result of these convictions, Respondent was sentenced: to serve three (3) years  
10 informal probation; to pay a fine of \$300.00 or complete six days of community service in lieu of  
11 the fine; to pay a state restitution fine totaling \$100.00; to pay a \$100.00 probation revocation  
12 restitution fine; to pay a \$40 security fee; and to serve 120 days in custody.

#### 13 **FIFTH CAUSE FOR DISCIPLINE**

##### 14 **(Using Alcohol to an Extent Dangerous to Self and Others)**

15 17. Respondent's license is subject to discipline under Code section 2762, subdivision  
16 (b), in that Respondent used alcohol to an extent dangerous to herself and others as set forth in  
17 paragraphs 13 through 15 which are incorporated here by this reference.

#### 18 **SIXTH CAUSE FOR DISCIPLINE**

##### 19 **(Criminal Convictions Involving the Consumption of Alcohol)**

20 18. Respondent's license is subject to discipline under Code section 2762, subdivision  
21 (c), in that Respondent was convicted of a criminal offenses involving the consumption or self-  
22 administration of alcohol as set forth in paragraphs 13 through 15 which are incorporated here by  
23 this reference.

24 ///

25 ///

26 ///

27 ///

28 ///



PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number RN 306165, issued to Respondent Dotti I. Smith, also known as Dorothy I. Smith, also known as Dorothy Irene Smith.

2. Ordering Respondent to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 1/25/10 Stacie Benum  
for LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

SD2009804816  
80420289.doc